

PS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PEREIRA DA SILVA LUCIANO,

Petitioner,

v.

6:25-CV-06106 EAW
ORDER

ERIC H. HOLDER, Attorney General of
the United States, et al.,

Respondents.

Pro se petitioner Pereira Da Silva Luciano (“Petitioner”) is a civil immigration detainee currently confined at the Buffalo Federal Detention Facility. Petitioner has filed a Petition for a writ of habeas corpus under 28 U.S.C. § 2241. (Dkt. 1).

DISCUSSION

The filing fee for a petition for a writ of habeas corpus is \$5.00. 28 U.S.C. § 1914(a). Whenever a civil immigration detainee submits a petition for a writ of habeas corpus, the prisoner must either (1) pay the filing fee or (2) submit a motion to proceed *in forma pauperis*. Under 28 U.S.C. 1915(a)(1), the *in forma pauperis* motion must include an affidavit or affirmation establishing that the petitioner is unable to pay the fees and costs for the proceedings.¹

Here, Petitioner did not pay the \$5.00 filing fee nor did he submit a motion to proceed *in forma pauperis*.

¹ The Court has ordered that a form motion to proceed *in forma pauperis* with supporting affirmation be mailed to the petitioner. The form also is available at <http://www.nywd.uscourts.gov/pro-se-forms>.

CONCLUSION

For the reasons set forth above, the Clerk of Court shall administratively terminate the petition without prejudice. Petitioner is granted leave to reopen, no later than **30 days from the date of this Order**, by either (1) paying the \$5.00 filing fee or (2) submitting a motion to proceed *in forma pauperis* that establishes Petitioner's inability to pay fees and costs.²

ORDER

IT IS HEREBY ORDERED that the Clerk of Court shall administratively terminate this action without prejudice without filing the petition or assessing a filing fee; and it is further

ORDERED that the Clerk of Court shall send to Petitioner a form motion to proceed *in forma pauperis*; and it is further

ORDERED that if Petitioner wishes to reopen this action, by **30 days from the date of this Order**, Petitioner must submit either (1) a motion to proceed *in forma pauperis* that includes an affidavit or affirmation establishing the inability to pay fees and costs or (2) the \$5.00 filing fee; and it is further

ORDERED that upon Petitioner's submission of either (1) a motion to proceed *in forma pauperis* or (2) the \$5.00 filing fee, the Clerk of Court shall reopen this case.

² Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is reopened following the terms of this order, it is not subject to the statute of limitations time bar if it was originally filed timely. See *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner mailbox rule); *McDowell v. Del. State Police*, 88 F.3d 188, 191 (3d Cir. 1996); see also *Williams-Guice v. Bd. of Educ.*, 45 F.3d 161, 163 (7th Cir. 1995).

SO ORDERED.

Dated: February 21, 2025
Rochester New York



ELIZABETH A. WOLFORD
CHIEF JUDGE
UNITED STATES DISTRICT JUDGE